

### **REMARKS**

#### **I. Status of the Claims**

The application presently stands with claims 1-7, 22-23, and 26-33 where only claims 1, 22, and 29 are independent. The three independent claims and claims 26 and 28 are amended for the reasons stated below.

As a preliminary matter, claim 3 was amended to correct an informality. Specifically, the word “patients” was amended to recite -- patient’s --.

#### **II. Rejection under 35 USC §112**

Claim 26 stands rejected under 35 USC §112, second paragraph as being indefinite. In response, Applicants amended claim 26 to clarify that in one form the method includes audibly prompting a pharmacy for a first indicator for each of a pharmacy identification, a patient identification, and an identification of medication. For this reason, Applicants submit that the rejection has been overcome and respectfully requests that the indefiniteness rejection of claim 26 be withdrawn.

#### **III. Rejection of Claims 1, 3-5, 22, and 27-28 under 35 USC §103(a)**

Claims 1, 3-5, 22 and 27-28 stand rejected under 35 USC §103(a) as being unpatentable over Kobylevsky et al. (US Patent No. 6,493,427) in view of Iliff (US Patent No. 6,022,427). In response, Applicants traverse because the cited references do not disclose or suggest all of the features recited in claim 1 and more specifically:

in response to receiving the first indicator from the pharmacy, retrieving, from a database, a second indicator of the same information indicated by the first indicator and including at least one word, wherein the first indicator includes different word or words than the word or words included in the second indicator ...

as now recited in claim 1. Similar language as to the first and second indicator using different words relative to each other is recited in claim 22 as well as claim 29.

In addition to that recited above, claims 1 and 22 as well as claim 29 were also amended to clarify that the term “words” includes letters (e.g. a name of a pharmacy or patient) or numbers (such as a phone number) or both (such as an identification number). The term “first indicator” was also added to claims 1 and 29 for internal consistency and to clarify that the confirming step involves confirming that the first indicator identified the correct information. Claim 22 recites confirming the first indicator is correct.

Generally, Kobylevsky merely discloses that a pharmacy may call to retrieve voice messages (col. 23, lines 62-66). Kobylevsky discloses that this may be performed on a computer and the pharmacy employee merely presses a “play” button or the pharmacy may call a central station (Id. and col. 29, lines 9-31). The fact that the doctors are prompted by voice for information to leave messages for the pharmacy (col. 7, lines 42-45) suggests nothing more than a typical recorded instruction for the pharmacy of “if you wish to retrieve messages, press 1” for example. Nothing in Kobylevsky suggests or directs one skilled in the art to cause the pharmacy to confirm that an audibly recited second indicator is correct when the second indicator is provided in response to the pharmacy providing an audibly prompted first indicator.

The following is in response to a number of the Examiner’s specific arguments.

**A. Kobylevsky does not disclose or suggest the claimed form of the first and second indicators (step b and c as labeled by the Examiner)**

As now recited in claims 1 and 22, the first and second indicators have different words (such as a telephone number and a pharmacy name respectively in one possible example) to indicate the same information (such as a pharmacy identification). Thus, the first and second indicators must have more differences than only a change in a format (text versus voice file) as asserted by the Examiner (Office Action pages 4-5, lines 3-6). Therefore, the second indicator cannot be a voice file of the pharmacy name when the first indicator is the text file of the same pharmacy name. For this reason, Kobylevsky does not disclose or suggest all of the features recited in claim 1, and similarly in claim 2, and therefore Applicants request this rejection of claims 1 and 22 and their depending claims be withdrawn.

**B. Iliff does not disclose or suggest modifying Kobylevsky to audibly prompt the pharmacy with a statement of words that describes the first or second indicators as claimed (part of step b, step d and step e as labeled by the Examiner)**

Iliff discloses a system for providing a customer or patient access to medical information. Thus, Iliff merely discloses audibly prompting a patient rather than prompting a pharmacy (see col. 3, lines 7-15 where the term “users” clearly refers to patients or customers and makes no suggestion that the user is a pharmacy itself, col. 13, line 59 and col. 29 both cited by the Examiner). Thus, combining Iliff with Kobylevsky merely teaches to modify Kobylevsky to prompt the patients. Nothing in Iliff specifically directs one skilled in the art to make the extra or additional modification of Kobylevsky to audibly prompt a pharmacy with first and second indicators as recited in the claims. Only the present application

and claims provide the idea of audibly prompting the *pharmacy* with a description of a first indicator and the second indicator as claimed.

Additionally, the Examiner's motivation to combine the references would not lead to the method recited in claim 1 for a number of reasons. First, the motivation of "providing greater access to high quality, fast medical service at reasonable cost via a telephone network" is the general purpose of any telephone prescription service. Thus, this purpose does not direct one skilled in the art to add anything to Kobylevsky since Kobylevsky already inherently performs this motivation (see Kobylevsky, col. 2, lines 49-56 that describes objects of the invention including automatic processes and routing of the caller (e.g. patient) to obtain refill information which obviously increases the speed and access to medical service).

Second, at most, the motivation cited by the Examiner directs one skilled in the art to modify Kobylevsky by adding processes for communicating with the patient rather than anything to do with the pharmacy. The section for the motivation cited by the Examiner, as explained above, clearly refers to patients and customers not pharmacies (see e.g., col. 3, lines 7-15). In fact, the pharmacy is never even mentioned in Iliff.

Third, and as mentioned in Amendments A and B, the problem solved by the method presently recited in claim 1 relating to the first and second indicators is not directed to increasing the speed and access to data. Instead, claim 1 is directed to error reduction. Thus, claim 1 recites a method that permits the pharmacy to use a mode of communication for requesting a refill authorization that is even more accurate than typing the data into a computer. This is true since the interactive voice response system eliminates the need to visually double check something typed on a computer screen with the risk that the visual check may be performed badly or not at all. Instead, the presently claimed system forces the

pharmacy to pay careful attention to what is being heard in order to obtain the desired refill authorizations (see e.g. Present Application, page 12, lines 3-14 (steps 140-144 on FIG. 3A1)). Thus, the motivation of increased speed or access does not lead to the features recited in claim 1. Since no motivation to combine the cited references exist to derive all the features recited in claim 1 and similarly in claim 22, Applicants request this rejection of claims 1 and 22 and their depending claims be withdrawn.

**C. Iliff does not disclose or suggest requesting the pharmacy to indicate whether or not the second indicator is correct in response to receiving a prompt for a first indicator (steps (d) and (e) as labeled by the Examiner, Office Action, page 6, lines 4-5)**

Even if Iliff could be combined with kobylevsky, neither of the two processes cited by the Examiner disclose the claimed feature of having the pharmacy confirm a second indicator is correct after receiving a prompt for a first indicator with different words than that of the second indicator. In contrast, Iliff discloses a confirmation loop where something is stated to the patient and the patient is asked if the statement is correct (col. 13, lines 55-62 as well as col. 18 lines 44-47 as cited by the Examiner, Office Action page 5, line 14). For example, a patient is asked for confirmation of each piece of information, e.g., age, sex, etc. by stating a piece of information to the patient and asking (yes or no) if it is correct, and then reciting the next piece of information and asking if it also correct, and so on (see FIG. 7c, and col. 27, lines 50-65). Assuming *arguendo* that the patient is being asked about a second indicator, no audibly prompted first indicator exists that indicates the same information as a different second indicator using different words than the first indicator for each piece of information. Instead, the confirmation is accomplished with a single indicator for each piece of information.

Thus, the disclosed configuration loop does not disclose or suggest the claimed confirmation of information with first and second indicators as recited in claim 1 and similarly with claim 22.

In another login process also cited by the Examiner (Office Action page 5, lines 14-15), a previously recorded voice file for a patient is found in response to receiving a pin number (col. 29, lines 21-24, 47-57). But in this step of the registration process, the system does not ask the patient to confirm that the voice file is correct. Instead, the system asks the patient for his or her name to create a new voice file and then matches the new voice file to the previously recorded voice file. Further, nothing in Iliff suggests why this process should be available for a pharmacy instead of a patient. So again, the claimed feature of asking the pharmacy to confirm a first indicator is correct by providing a response as to whether a second indicator is correct as similarly recited in claims 1 and 22 is not disclosed or suggested by Iliff. For this reason, Applicants request this rejection of claims 1 and 22 and then depending claims be withdrawn.

For all of the reasons mentioned above in Sections A, B and C herein, Applicants submit that the 35 USC §103(a) rejection based on Kobylevsky in view of Iliff, and of independent claim 1, as well as claim 22 which recites similar features to that recited in claim 1, and their respectively depending claims 2-4, 6-7, 23, and 26-28 have been overcome and withdrawal of the rejection is respectfully requested.

**D. 35 U.S.C. §103 (a) Rejection of Claim 3**

Regarding claim 3, Iliff does not disclose or suggest a first indicator that is a partial patient name while a second indicator is a full name as recited in claim 3. Claim 3 depends from claim 1 and therefore includes all of the features of claim 1. Thus, the second indicator (full name for example) is provided in response to

providing the first indicator (partial name) as recited in claim 1. The section of Iliff cited by the Examiner merely states that a voice file of a patient's name is provided in response to a pin rather than having anything to do with a portion of the patient's name being provided by the pharmacy before a full name is recited (col. 29, lines 54-57). For this additional reason, Applicants submits that the §103(a) rejection of claim 3 has been overcome and respectfully requests that this rejection be withdrawn.

**E. 35 U.S.C. §103 (a) Rejection of Claim 28**

Claim 28 was amended to include a further alternative feature of the invention to clarify that the pharmacy cannot obtain refill prescription information through the interactive voice response system unless the second indicator is correct. Thus, Applicants submit that this rejection is moot and respectfully request that this rejection be withdrawn.

**IV. Rejection of Claims 2, 6, 7, and 23 under 35 U.S.C. §103(a)**

Claims 2, 6, 7 and 23 stand rejected under 35 U.S.C. §103(a) as being obvious to Kobylevsky in view of Goetz. In response, these claims all depend directly or indirectly from claim 1 or 22, and therefore include all of the features of claim 1 or 22 plus other features. Thus, Applicants submit that for the reasons mentioned above to overcome the rejection of claim 1, the rejection of these claims are also overcome. Accordingly, Applicants respectfully request that the 35 U.S.C. §103(a) of claims 2, 6, 7, and 23 be withdrawn.

**V. Rejection of Claims 29 and 33 under 35 USC §103(a)**

Claims 29 and 33 stand rejected under 35 USC §103(a) as being unpatentable over Kobylevsky et al. (US Patent No. 6,493,427) in view of Goetz et al. (US Patent No. 6,421,650). In response, Applicants traverse first by repeating the arguments from above that nothing in Kobylevsky, and similarly nothing in Goetz or any of the other references, discloses or suggests that a pharmacy should confirm “the first indicator identifies correct information” by “providing the pharmacy with an audible statement of words reciting the second indicator of the information” as now recited in claim 29. The Examiner asserts that the latter portion of this feature is disclosed by reciting an Rx number in Kobylevsky (citing col. 25, lines 21-23 of Kobylevsky, Office Action, page 15, step (e)). This is not correct, however, because this portion of Kobylevsky specifically states “...the system will playback to customers the entered Rx numbers for verification.” Kobylevsky, col. 25, lines 21-23. Nothing in this statement or section of Kobylevsky suggests audibly prompting a pharmacy by stating a second indicator. Goetz provides no suggestion of this feature either. Thus, for this reason, Applicants submit that the §103(a) rejection of claim 29 and its depending claim 33 have been overcome and respectfully request that the §103(a) rejection of claims 29 and 33 be withdrawn.

In addition, the cited references, alone or in combination, do not disclose or suggest audibly reciting the second indicator. The Examiner asserts that the first indicator is an Rx number (Office Action, page 14, lines 13-14 (step (a))), and the second indicator is the telephone number where the patient can be reached (Office Action, page 15, lines 6-8). Kobylevsky does not disclose or teach audibly reciting this phone number (see col. 25, lines 21-23 cited by the Examiner). For this additional reason, Applicants submit that the §103(a) rejection of claim 29 and



its depending claim 33 have been overcome and respectfully request that this rejection be withdrawn.

**VI. Rejection of Claims 30-32 under 35 USC §103(a)**

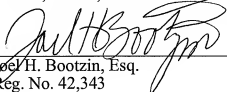
Claims 30-32 stand rejected under 35 USC §103(a) as being unpatentable over Kobylevsky et al. (US Patent No. 6,493,427) in view of Goetz et al. (US Patent No. 6,421,650) and further in view of Pilarczyk (U.S. Patent No. 4,766,542). In response, Applicants traverse because claims 30-32 depend directly or indirectly from claim 29, and therefore, include all of the features of claim 29 plus other features. Thus, Applicants repeat the reasons mentioned above to overcome the §103(a) rejection of claim 29 and adds that Pilarczyk does not disclose or suggest specifically providing audible statements to a pharmacy and with first and second indicators as recited in claim 29. Thus, Applicants submit that the §103(a) rejection of claims 30-32 has also been overcome. Accordingly, Applicants respectfully request that the §103(a) rejection of claims 30-32 over Kobylevsky in view of Goetz and Pilarczyk be withdrawn.

**CONCLUSION**

For all the reasons mentioned above, Applicants respectfully request reconsideration and allowance of all pending claims. The Examiner is invited to contact the undersigned attorney to expedite prosecution.

Very truly yours,

FITCH, EVEN, TABIN & FLANNERY

  
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Date:

8/31/2006

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